

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN

NANCY KINDER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

NORTHWESTERN BANK,

Defendant.

Case No. 1:10-cv-405  
Honorable Paul L. Maloney

**JOINT MOTION FOR PRELIMINARY  
APPROVAL OF CLASS-ACTION  
SETTLEMENT**

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Plaintiff, Nancy Kinder, and Defendant, Northwestern Bank, hereby move this Court for an order (1) certifying the proposed Settlement Class for settlement purposes only; (2) preliminarily approving all terms and conditions of the proposed Class-Action Settlement Agreement and Release (the "Settlement Agreement"); (3) directing Notice to the Class Members; and (4) setting dates for submitting claims, exclusions ("Opt-Outs"), objections, and a Final Approval Hearing. In support of this motion, the parties state as follows:

1. Counsel for Plaintiff and Defendant have reviewed and analyzed the complex legal and factual issues presented in this case and the risks and expenses likely associated with

litigating this case to conclusion. The parties and their respective counsel negotiated and executed a comprehensive Settlement Agreement (**Ex. 1**), which proposes to settle this case on a class-wide basis.

2. The parties have stipulated to certification of the Class for settlement purposes only, as follows:

All persons who, from **April 26, 2009, through May 7, 2010**, were charged a transaction fee for the use of an automated teller machine operated by Northwestern Bank at any of the following locations:

<b>Branch Name and Address</b>
<b>Acme</b> —5300 US-31 North, Acme, MI 49610
<b>Bay Harbor</b> —4000 Main Street, Bay Harbor, MI 49770
<b>Cadillac</b> —150 Granite Street, Cadillac, MI 49601-2412
<b>Cadillac N</b> —1573 North Mitchell, Cadillac, MI 49601-1130
<b>Charlevoix</b> —1425 Bridge, Charlevoix, MI 49720-1609
<b>Elk Rapids</b> —97 River Street, Elk Rapids, MI 49629
<b>Gaylord</b> —711 Main Street, Gaylord, MI 49735-1866
<b>Gaylord S</b> —2091 Otsego, Gaylord, MI 49735-9422
<b>Harbor Springs</b> —106 East Main, Harbor Springs, MI 49740-1510
<b>Houghton Lake</b> —Murphy USA, 2141 West Houghton Lake Road, Houghton Lake, MI 48629
<b>Houghton Lake</b> —5213 West Houghton Lake Drive, Houghton Lake, MI 48629-8214
<b>Interlochen</b> —2112 M-137, Interlochen, MI 49643-9386
<b>Kalkaska</b> —112 South Cedar, Kalkaska, MI 49646-9458
<b>Kingsley</b> —111 North Brownson, Kingsley, MI 496349-5103
<b>Leland</b> —115 North Main Street, Leland, MI 49654
<b>Ludington</b> —101 East Court, Ludington, MI 49431-1777
<b>Ludington</b> —Ludington Metal Works, 901 East Sixth Street, Ludington, MI 49431
<b>Ludington E</b> —3965 West US-10, Ludington, MI 49431-7613
<b>Manistee</b> —325 First Street, Manistee, MI 49660-1701
<b>Manistee</b> —Glen's Market, 1057 US-31 South, Manistee, MI 49660
<b>Northport</b> —105 East Nagonaba Street, Northport, MI 49670
<b>Petoskey</b> —300 Howard Street, Petoskey, MI 49770-2414
<b>Petoskey</b> —919 Spring Street, Petoskey, MI 49770-2854
<b>Suttons Bay</b> —105 West Fourth Street, Suttons Bay, MI 49682
<b>Suttons Bay</b> —212 St. Joseph, Suttons Bay, MI 49682-5103
<b>Tom's Market</b> —1144 South Airport Road, Traverse City, MI 49686-4739
<b>Traverse City</b> —613 West 14th Street, Traverse City, MI 49684-4049
<b>Traverse City</b> —13936 SW Bay Shore Drive, Traverse City, MI 49684-6264
<b>Traverse City</b> —625 South Garfield, Traverse City, MI 49686-3425
<b>Traverse City</b> —738 Munson Avenue, Traverse City, MI 49686-3525
<b>Traverse City</b> —203 South Union, Traverse City, MI 49684-2521

Branch Name and Address
<b>Traverse City</b> —4205 US-31 South, Traverse City, MI 49685-7996
<b>Traverse City</b> —Glen's Chums Corner, 4144 US-31 South, Traverse City, MI 49684
<b>Traverse City</b> —Traverse City Mortgage Center, 107 East Front Street, Traverse City, MI 49684
<b>Williamsburg</b> —6353 US-31 North, Williamsburg, MI 49690-9306

3. Pursuant to the Settlement Agreement, the parties have agreed, *inter alia*, that Defendant will establish a Settlement Fund of \$200,000. The Settlement Fund shall be disbursed as follows, pursuant to Section 2.3 of the Settlement Agreement:

A. Administration Costs. The costs of the Class Settlement Administrator shall first be deducted.

B. Notice Costs. The costs of Publication Notice shall next be deducted.

C. Payment to Class Representative. Plaintiff shall receive \$2,000 for her individual claim and as an incentive award for her services as Class Representative.

D. Payment to Class Counsel. Class Counsel shall receive \$80,000 in full satisfaction of all reasonable attorneys' fees and costs, subject to Court approval.

E. Class Recovery. The amount remaining in the Settlement Fund after deducting the amounts set forth in paragraphs A through D above shall be divided *pro rata* among Participating Claimants; provided, however, that no Class Member shall receive payment from the Settlement Fund in an amount that exceeds \$250, regardless of whether that Class Member used an ATM at Issue multiple times or used multiple ATMs at Issue.

F. Cy Pres. The amount remaining in the Settlement Fund after deducting the amounts set forth in paragraphs A through E, if any, shall be paid in the name of Nancy Kinder and family as a *cy pres* award to the following: 30 percent to the Interlochen Summer Arts Camp and 70 percent to the Jerry Lewis MDA/ALS Clinical and Research Center of the University of Southern California Medical Center.

4. The parties have agreed on the forms of Class Notice to be given to Class Members, pursuant to Section 2.5 of the Settlement Agreement: publication notice once each in the Michigan Press Association newspaper publications distributed in the areas in which the ATMs at Issue are located (Exhibit B to the Settlement Agreement), posted notice on the ATMs

at Issue (Exhibit C to the Settlement Agreement), and Web site notice (Exhibit D to the Settlement Agreement).

5. The parties submit that the proposed forms of Class Notice meet the requirements of Rule 23. Rule 23(c)(2)(B) states, "For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." The parties submit that newspaper publication notice (covering the areas in which the ATMs is located), posted notice, and Web site notice, as set forth in Section 2.5 of the Settlement Agreement, are the best Class Notices practicable under the circumstances. The parties' proposed forms of Class Notice are reasonable given that (a) publication notice is being specifically targeted to the papers circulated in the ATMs' vicinity; (b) a detailed notice, which includes the full Settlement Agreement, the complaint, and other court documents, is being published on the Internet; and (c) notice is also being posted on the very ATMs that are the subject of this litigation.

6. In addition to the agreed-upon forms of notice, the parties have also agreed on a form of a proposed Preliminary Approval Order (Exhibit E to the Settlement Agreement) and a proposed Final Approval Order (Exhibit F to the Settlement Agreement).

WHEREFORE, for the foregoing reasons, the parties request that this Court enter an order (1) certifying the proposed Settlement Class for settlement purposes only; (2) preliminarily approving all terms and conditions of the proposed Class-Action Settlement Agreement and

Release; (3) directing Class Notice to the Class Members; and (4) setting dates for submitting claims, exclusions, objections and a Final Approval Hearing.

Date: June 9, 2011

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Attorney for Plaintiff

VARNUM  
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